

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
THIRD REGION**

**CHURCH HOME OF THE PROTESTANT  
EPISCOPAL CHURCH IN THE CITY OF ROCHESTER  
d/b/a THE EPISCOPAL CHURCH HOME<sup>1</sup>**

Employer

and

**Case 3-RC-11322**

**1199 SEIU, AFL-CIO**

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended (“Act”), a hearing was held before a hearing officer of the National Labor Relations Board (“Board”).

Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, I find:

The hearing officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed.

The Church Home of the Protestant Episcopal Church in the City of Rochester d/b/a The Episcopal Church Home (“Employer”) is a not-for-profit organization engaged in providing residential nursing home care, enriched housing and independent housing for seniors at its Rochester, New York facilities. Annually, the Employer derives gross revenues in excess of

---

<sup>1</sup> The Employer’s name appears as amended at the hearing.

\$100,000 from its operations and purchases and receives at its facilities, goods and materials valued in excess of \$5,000 directly from points outside the State of New York.

The parties stipulated, and I find, that 1199 SEIU, AFL-CIO, (“Petitioner”) is a labor organization within the meaning of Section 2(5) of the Act.

A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Petitioner seeks an election in a single-facility bargaining unit comprised of licensed practical nurses and service and maintenance employees employed at the Employer’s Episcopal Church Home (“Nursing Home”) a skilled nursing facility located at 505 Mount Hope Avenue, Rochester New York.<sup>2</sup> The Employer, contends, contrary to the Petitioner, that the only appropriate unit must be a multi-facility unit including licensed practical nurses and service and maintenance employees at its four facilities.<sup>3</sup> These four facilities are: the Nursing Home located at 505 Mount Hope Avenue; River Edge Manor Apartments (“River Edge”), a non-licensed independent housing facility for seniors located at 535 Mount Hope Avenue; Brentland Woods (“Brentland”), a licensed enriched housing facility for seniors located at 3831 East Henrietta Road in Henrietta, New York; and, Seabury Woods (“Seabury”), a licensed enriched housing and non-licensed independent housing facility for seniors located at 3285 Buffalo Road in Gates, New York. River Edge and the Nursing Home are separate buildings, physically connected by a doorway or hallway. The Brentland and Seabury facilities are approximately seven miles from the Nursing Home and administrative notice has been taken that these two facilities are approximately fourteen miles apart.<sup>4</sup>

The parties stipulated that the full-time, regular part-time and per diem employees at the Nursing Home employed in the following job titles should be included in the unit found

---

<sup>2</sup> The Petitioner amended its petition at the hearing to seek a unit consisting solely of the employees at the Nursing Home. There are approximately 240 to 260 employees in the petitioned-for unit.

<sup>3</sup> There are approximately 316 employees in the Employer’s proposed unit.

appropriate herein (the approximate number of employees in each classification is noted in parenthesis): assistant chef (1); certified occupational therapy assistant (1 and 1 per diem); certified nursing assistant (96 and 29 per diem); certified nursing assistant/program assistant (1); clinical associates (4); cooks (4); food service crew leader (4); diet clerk (1); diet technician (1); environmental service workers (17); food service workers (13 and 3 per diem); health information manager (1 per diem); laundry crew leader (1); laundry workers (4); lead maintenance mechanic (1); licensed practical nurse (49); maintenance mechanic (1); nursing rehabilitation aide (2); physical therapy assistant (1); recreation resident assistant (3); social work case assistant (1); salon manager (1); unit secretary (5); and wait staff (1).

The parties also stipulated that the following job classifications at the Nursing Home should be excluded from any unit found appropriate: speech pathologist (1); accounting clerk (1); accounting manager (1); administrative assistant to the vice president of operations (1); billing accounts receivable clerk (1); chaplain (1); development assistant (1); development/ PR associate (1); director of community services (1); director of human resources (1); director of nursing (1); director of finance (1); director of rehabilitation (1); director of social work (1); director of spiritual life (1); director of support services (1); director of therapeutic recreation (1); employee health nurse (1 and 1 per diem); executive assistant to the president (1); executive director of the foundation (1); facilities management coordinator (1); human resources specialist (2 and 1 per diem); maintenance supervisor (1); marketing associate (2); marketing coordinator (1); nurse managers (5); nurse practitioners (2 and 2 per diem); nursing education coordinator (1); nursing supervisors (6 and 9 per diem); occupational therapists (3 per diem); payroll benefits manager (1); physical therapist (6 per diem); president (1); program service coordinator (1); registered nurse/clinical coordinator (1); RN/MDS coordinator (1 and 1 per diem); security officers (5 and 2 per diem); security/communications manager (1); social worker (1 and 1 per

---

<sup>4</sup> The administrative notice is based on the addresses contained in the record.

diem); therapeutic recreation specialist (4 and 1 per diem); vice president of finance (1); junior recreation assistant (1); vice president operations/administrator (1); and volunteer coordinator (1).

The parties also stipulated that, should a multi-facility unit be found appropriate herein, the following job classifications at River Edge should be included in the unit: activities coordinator (1); assistant chef (1); driver (1); environmental service worker (1); host/hostess (1); maintenance mechanic (1); sous chef (1); utility worker (1 per diem); and wait staff (5 and 3 per diem). The parties also stipulated that the director of housing (1) and chef manager (1) at River Edge should be excluded from any unit found appropriate.

The parties also stipulated that, should a multi-facility unit be found appropriate herein, the following job classifications at Brentland should be included in the unit: activities coordinator (1); assistant chef (1); food service crew leader (1); environmental service workers (2); food service worker (4 and 3 per diem); resident care assistants (10 and 3 per diem); senior resident care assistant (1); skilled maintenance mechanic (1); sous chef (1); utility worker (1); and wait staff (1 and 1 per diem). The parties agreed that the following job classifications at Brentland should be excluded from any unit found appropriate: director of housing (1); case manager/ assistant director (1); resident care coordinator (1); and chef manager (1).

The parties also stipulated that, should a multi-facility unit be found appropriate herein, the following job classifications at Seabury should be included in the unit: cooks (2); environmental service workers (3); food service workers (1 and 2 per diem); licensed practical nurses (3); maintenance mechanic (1 per diem); resident care assistants (21 and 2 per diem); skilled maintenance mechanic (1); utility worker (1); and wait staff (4). The parties also stipulated that the following job classifications at Seabury should be excluded from any unit found appropriate: director of housing (1); case manager (1); director of resident services (1); resident care coordinator (1); and chef manager (1).

Finally, as detailed below, the Petitioner asserts that certain clerical positions are business office clericals and/or confidential employees and should not be included in any unit found appropriate herein. The Employer contends that these positions are appropriately included in the unit with other types of clerical employees. The Petitioner has stated that it is willing to proceed to an election in any unit found appropriate herein.

### **FACILITIES**

The Employer's four facilities are organized under one holding company entitled Episcopal Seniorlife Communities, Inc.<sup>5</sup> The Nursing Home, River Edge, Brentland and Seabury are each separately incorporated with their own board of directors and officers. River Edge, which opened in 1995 or 1996, is incorporated as E.C.H. Housing and provides independent housing for seniors who are fully functional and able to take care of their own daily living activities. River Edge consists of 49 apartments, including 10 two-bedroom apartments. There are approximately 21 employees and 54 residents at River Edge.<sup>6</sup> It is a private pay facility. Brentland, which opened in 1997 or 1998, is incorporated as C.H. Services, Inc. and is a licensed enriched living facility with 60 housing units. There are approximately 60 residents and 35 employees at Brentland.<sup>7</sup> At Brentland, the employees assist the residents with daily living activities, such as grooming, dressing, and meals. In order to reside at the facility, the seniors must be able to move themselves from their beds, be able to feed themselves and privately pay for their residence. Seabury, which opened in August 2002, is incorporated as Gates Senior Housing Inc. for the portion of its facility devoted to providing enriched housing for seniors, and as Episcopal Senior Housing Inc. for the portion of its facility that provides independent housing. Seabury has 90 units that consist of apartments and studios, including a memory care unit for

---

<sup>5</sup> The company has the following administrative hierarchy, which includes the president and chief executive officer of Episcopal SeniorLife Communities, Loren Ranaletta; the vice president of operations/administrator, Erane Allen; vice president of finance/chief financial officer, Lisa Marcello; director of human resources, Carol Oleksia; and director of community services marketing, Sharon Steimer.

<sup>6</sup> The Church Home of the Protestant Episcopal Church d/b/a Episcopal Church Home is the employer of record for this facility as well as the other facilities.

seniors suffering with dementia, as well as 19 cottages for independent living. Seabury has approximately 80 residents and 51 employees. Seabury is also a private pay facility. The Nursing Home provides 24-hour skilled nursing services including rehabilitation, dementia care, and sub-acute rehabilitation services in its 180-bed facility with 300 employees.<sup>8</sup> The Nursing Home also accepts payments from Medicaid and Medicare for its residents. In addition to the above-mentioned entities, Episcopal Church Home Foundation, Inc. provides funds for the Employer's facilities that are not generated by government revenues from the Nursing Home or its private pay residents at River Edge, Brentland and Seabury. Episcopal SeniorLife Communities, Inc. also includes two other organizations: A Touch of Home, which is an adult daycare facility; and CH Services, Inc./Traditions in Caring, a provider of home healthcare, which are not at issue in this proceeding.<sup>9</sup>

### **NURSING HOME**

In order to provide its skilled nursing services, the Nursing Home is organized into the following departments that primarily provide patient care: nursing services; social work; therapeutic recreation; and therapy. Attendant services are provided by support services, food services, finance, human resources and marketing.

The Nursing Home's services are provided in a building divided into two wings designated as north hall and south hall. The offices are located primarily on the first floor and basement of the north hall with the remainder of the building devoted to resident care. The employee cafeteria and break room, is located in the basement of the north hall. There are five nursing units designated as north or south hall units, with the units in the north hall having approximately 40 beds per unit and the south hall units having approximately 30 beds per unit.

---

<sup>7</sup> The Employer has a contract to manage Brentland, which is owned by Bishop Sheen Ecumenical Housing.

<sup>8</sup> The Nursing Home and River Edge are licensed to provide outpatient physical and occupational therapy as well as outpatient speech pathology.

<sup>9</sup> The parties stipulated that since these organizations do not provide residential care, their employees do not share a community of interest with the employees at the other facilities.

Residents with rehabilitative needs who are expected to recover and return to independent living, residents with early dementia and some cognitive loss who need assistance with daily life activities, and long-term residents with chronic diseases that need medical services on a 24-hour basis, occupy these units. Generally, two residents separated by a curtain occupy each room in the unit. Each unit is staffed by approximately two licensed practical nurses (“LPN”), and five certified nurses assistants (“CNA”), who are part of the nursing department.

The nursing department includes the director of nursing who has the following employees reporting directly to her: five nurse managers; two shift supervisors, per diem registered nurses who are supervisors; MDS coordinator; and a RN staff education coordinator. The department also includes LPNs, CNAs and clinical associates who the parties have agreed are properly included in any unit found appropriate. The office for the nursing department is located on the first floor of north hall and is next to the vice-president/administrator’s office.

The social work department, which is located on the first floor of the north hall, also provides resident care. Ellen Nywick, the department director, supervises the social workers, admissions coordinator and social work case assistant. The director of social work reports to the vice-president/administrator. The social work case assistant, who, in accordance with the stipulation of the parties, is included in any unit found appropriate, and the social workers,<sup>10</sup> are involved with evaluating residents and assessing their needs, including ensuring that the residents have clothing and footwear. The admissions coordinator determines whether a potential resident will be admitted based on the Nursing Home's pre-determined guidelines. The employees in the social work department generally work from 8:00 a.m. to 4:00 p.m., Monday through Friday.

The therapy department also provides resident care and is located in the hallway between the north and south halls. This department is supervised by Lauren Surasky and includes physical therapists, occupational therapists and a speech pathologist. The department also includes certified occupational therapy assistants and physical therapy assistants, who are included in any unit found appropriate by stipulation of the parties. Surasky reports to director of community services and marketing, who in turn reports to the vice-president of operations/administrator. The employees in this department work with residents to increase their mobility and functions by providing rehabilitation treatment. Much of this work is done in the units. The employees in the physical therapy department generally work Monday through Friday, from 7 a.m. to 3 p.m. or from 8 a.m. to 4 p.m.

The therapeutic recreation department also provides resident services and is located on

---

<sup>10</sup> The parties stipulated to exclude the social worker from the unit.



the first floor of north hall. The director of the department, Diane Anderson, reports to the vice-president of operations/administrator. The department includes the following employees: therapeutic recreation specialists, junior recreation assistant, as well as recreation resident assistant, and CNA/program assistant.<sup>11</sup> They provide programs and recreation for the residents and spend much of their time on the units.

The Nursing Home also has departments that provide attendant services, including support and food services. The support services department includes environmental services/laundry, maintenance and communications/security. The department director, Alan Chapman, reports to the administrator/vice president. The supervisor of the environmental services/laundry, Cathy Reed, reports to Chapman. Environmental services are located in the basement of the south hall. The environmental workers clean the facility, including the kitchen, resident rooms, common areas and offices. The employees in environmental services work from 6:00 a.m. to 2:00 p.m. or from 2:00 p.m. to 8:00 p.m. The laundry workers launder the facility's linens and other cloth items. The laundry workers are on duty from 5:00 a.m. to 8:00 p.m. over several shifts. The communications/security department includes security guards and receptionists, and is supervised by Mark Preston. The security guards provide 24-hour coverage over several shifts. The maintenance department is located in the basement of the north hall. The maintenance mechanics are supervised by Eric Behrens. The maintenance mechanics perform repairs and fix the equipment at the Nursing Home. The mechanics also periodically perform preventative maintenance at River Edge. The employees in the maintenance department typically work from 6:00 a.m. to 2:00 p.m. or from 7:00 a.m. to 3:00 p.m. Each departmental supervisor reports to Chapman.

A private company, Sodexho, manages the food services department at the Nursing Home. Kathleen Urquhart is the director of food service at the Nursing Home. The director and

---

<sup>11</sup> The recreation resident assistant and CNA/program assistant have been included in any unit found appropriate

department manager are Sodexho employees. Urquhart reports to Ron Forgue, Sodexho's general manager. The Employer's vice-president/administrator oversees the Sodexho contract. The food service department at the Nursing Home also includes the assistant chef, cooks, crew leaders, diet clerk, diet technicians, food service workers and wait staff, who are employees of the Nursing Home.<sup>12</sup> These employees work in the main kitchen located in the basement of the north hall to provide meals for the residents. Sodexho orders the provisions necessary for food services. Sodexho also provides food services at the Employer's other facilities. At the other facilities, the chef manager is a Sodexho employee. Sodexho purchases the food for all the facilities.<sup>13</sup>

The finance and human resources departments for all the Employer's facilities are located at Nursing Home.<sup>14</sup> The finance department is located in the basement of the north hall and is supervised by Karen Young, director of finance, who reports to the vice president of finance, Lisa Marcello. This department includes the purchasing coordinator, resident account coordinator, billing accounts receivable clerk and payroll, and accounting managers.<sup>15</sup> The finance department is located in the basement of the north hall, except for the resident account clerk, who is located on the first floor of the north hall.<sup>16</sup>

The director of the human resources department, Carol Oleksiak, is located on the first floor of the north hall. Oleksiak supervises two human resource specialists, who are responsible for employee orientation, some training activities, benefits administration, the human resource information system and record keeping. Olesiak also supervises a part-time human resource

---

herein by stipulation of the parties.

<sup>12</sup> The parties have agreed to include these employees in any unit found appropriate herein.

<sup>13</sup> Sodexho also purchases uniforms, which it encourages the food service employees at each of the facilities to wear.

<sup>14</sup> Each facility has its own budget. As such, a portion of the shared services is attributed to each of the facilities, based on the amount of the overall budget. Food services are not a shared service, however, the record is unclear as to how the Employer accounts for the costs of its food services provided at each of its facilities.

<sup>15</sup> The parties have agreed to exclude from any unit found appropriate, the billing accounts receivable clerk, accounting clerk and accounting manager.

clerk, who performs clerical work for the employee health nurse and for the nursing education coordinator. Also included in this department is a part-time employee health nurse responsible for pre-placement physicals and annual employee health assessments, a per diem human resource specialist, and a per diem employee health nurse.

The employees in human resources provide services applicable to all four facilities. Human resources initially interviews applicants for all the facilities, who may have applied for a position by seeing an advertisement in the newspaper or by internal job listings that are posted at all of the Employer's facilities. Several of these applicants are then referred to the manager in charge of the department that is hiring. The manager and human resources then consult to choose one of the applicants. On occasion, the human resource department has contradicted a manager's choice.<sup>17</sup>

Once hired, the employee is subject to the supervision and discipline of their immediate supervisor. Their immediate supervisor has the sole discretion in disciplining his or her employees unless the infraction is severe, in which case human resources may be consulted. The departmental manager needing additional staffing submits requests for additional staff to human resources. Human resources has never denied a manager's request for additional staffing. An employee's immediate supervisor evaluates the employees and determines the amount of any pay raise. Human resources reviews this evaluation and a supervisor may be asked by that department to justify this raise, but human resources has never reduced a raise once set by the supervisor. At each facility, the employees' immediate supervisors, rather than human resources, are responsible for day-to-day supervision, including scheduling, assignments and discipline.

---

<sup>16</sup> The employees at the Nursing Home all use the same parking lot located either in the front or back of the facility, record their time by punching a time clock, and use the same cafeteria and break room located in the basement of the north hall.

<sup>17</sup> The record revealed that at Brentland, human resources did not adopt the chef manager's chosen candidate for a food service worker and hired someone else; at Seabury there was a disagreement with the house director and

The employees at all four facilities are eligible for the same benefits. They enjoy the same fringe benefits including tuition reimbursement, access to health insurance and flexible benefit accounts. They are paid in accordance with a wage schedule applicable to all the facilities. The employees also enjoy a dress down day and the opportunity to participate in an Employer-wide employee softball team. They are also eligible to win an Employer-wide employee of the year award. They are subject to the same employee handbook.<sup>18</sup>

The marketing department also provides services to all the facilities. This department is primarily located at River Edge. The marketing coordinator supervises two marketing associates and a marketing assistant. The coordinator reports to the director of community services/marketing, who in turn reports to the vice president of operations/administrator. The marketing department promotes all of the facilities.

### **RIVER EDGE**

River Edge provides independent living for seniors who do not require medical care or nursing assistance but do receive some services. The facility provides services such as one meal a day, with the option of purchasing additional meals, as well as activities such as trips into the community. If a resident needs additional services such as a home care aide, the resident must contact an outside agency to obtain one.<sup>19</sup> The approximately 21 employees at River Edge, include a maintenance mechanic, activities coordinator, driver, environmental service worker, host/hostess, resident's manager, sou chief, utility worker, wait staff, and receptionists. The housing director, Gary Shaw, is in charge of the facility and supervises these employees. The housing director reports to the CFO/VP of finance for Episcopal SeniorLife Communities, Lisa Marcello.

---

human resources hired another applicant; and there has been a disagreement between the nursing department at the Nursing Home and human resources.

<sup>18</sup> The employees at each of the Employer's facilities are required to wear name badges that say, "Episcopal SeniorLife Communities."

<sup>19</sup> The director of social work at the Nursing Home will also perform case management at River Edge by assessing what services may be needed and helps to procure services such as a home health aide.

## **BRENTLAND**

Brentland is licensed to provide enriched living for seniors who need some assistance with their daily life activities, such as ensuring that they eat three meals a day. In order to reside at the facility, the residents must be able to transfer themselves from their beds and feed themselves. The facility employs approximately 35 employees to provide three meals, assistance with grooming and dressing, as well as activities for the residents. The employees work in the following classifications: activities coordinator, assistant chef, food service crew leader, environmental service workers, food service workers, resident care assistants, maintenance mechanic, sous chef, utility worker, wait staff, case manager/ assistant director, and resident care coordinator. The employees are supervised by the housing director, Mike Wash, who also reports to the CFO/VP of finance.<sup>20</sup>

## **SEABURY**

Seabury offers at its main facility enriched housing, including a memory care unit for residents with dementia, and independent housing in its cottage homes. Approximately 40 people work at the facility to provide resident services including cooks, wait staff, food service workers, utility worker, environmental service workers, driver, LPNs, maintenance mechanic, resident care assistants, case manager, director of resident services, chief manager, and receptionists. The house director, Mark Wheeler, is in charge of this facility and he reports to the president of Episcopal SeniorLife Communities, Inc.<sup>21</sup>

## **Transfer of Residents**

The Nursing Home has approximately 25-30 admissions a month, which equates to approximately 300 to 360 admissions a year. Since 2002, about 42 of these admissions were

---

<sup>20</sup> Typically, these employees are scheduled to work during the day from approximately 7:00 a.m. to 8:00 p.m. However, the resident care assistants are scheduled to work from 7:00 a.m. to 3:00 p.m., 3:00 p.m. to 11:00 p.m., or 11:00 p.m. to 7:00 a.m. Brentland also has its own employee of the year award in addition to the one offered Employer-wide.

<sup>21</sup> The majority of the employees at Seabury work during the day between the hours of 7:00 a.m. and 5:00 p.m.

from River Edge, Brentland or Seabury, whose residents apply for admission to the Nursing Home as do the members of the community at large. Residents of the Employer's facilities are given priority in admission to the Nursing Home. River Edge and Seabury had 90 admissions in 2002, but the record is silent as to how many residents were admitted to Brentland. Since 2002, 46 residents from the Nursing Home were admitted to one of these three facilities. The resident transfers to Seabury occurred when the facility first opened. There were six resident transfers between Brentland, River Edge and Seabury. The facilities have the capacity to serve approximately 345 residents and there were a total of about 494 residents at all facilities during this period of time. There were 88 residents transferred among the facilities during this period.

### **Employee Interchange and Contact**

Since 2000, approximately 17 of the current 400 employees at the various facilities, including wait staff, CNAs, resident care assistants, utility worker, environmental services worker, receptionists and a maintenance mechanic, have voluntarily transferred from one facility to another when there was a job opening.<sup>22</sup> In order to transfer, the employee interviewed and was selected by the appropriate supervisor at the facility with the opening. The facilities cannot independently transfer employees and the employees that transfer do not lose their seniority. Approximately 34 employees have temporarily worked at other facilities since 2002. Eight of these employees have worked at another facility just once, while three other employees have worked at another facility a hundred times.<sup>23</sup>

The employees at the various facilities also have some limited opportunities to interact with each other. Employees from several of the facilities attended "HIPPA" training together. An employee from the Nursing Home conducts an exercise class at River Edge for the residents. As noted above, employees may also participate together on an Employer softball team. A

---

<sup>22</sup> The employees involved with A Touch of Home, whom the parties stipulated should not be included in any unit found appropriate herein, do not provide residential care or services, and thus were not included in this total. Transfers involving supervisory personnel were not included in this total.

driver from Seabury goes to the Nursing Home at least once a day to pick up mail intended for that facility. The driver transports residents from Seabury to the Nursing Home for physical therapy.<sup>24</sup> The employees from each facility go to the Nursing Home for their yearly health assessment.

### **UNIT APPROPRIATENESS IN THE HEALTH CARE INDUSTRY**

In Park Manor Care Center, 305 NLRB 872 (1991), the Board addressed the standard to be applied in determining appropriate units in non-acute health care facilities.

---

<sup>23</sup> When an employee works at a different facility, their wages are attributed to that facility's budget.

<sup>24</sup> The record is unclear as to the frequency of such transportation.

In Park Manor, the Regional Director had applied a "community of interest"<sup>25</sup> standard in excluding licensed practical nurses from a service and maintenance unit. The employer therein had argued in its request for review that the "disparity of interest" standard should have been applied. In remanding the case for further consideration, the Board declined to rigidly apply either standard:

[W]e do not have a sufficient body of empirical data as to nursing homes to make a uniform rule as to them at this time, and perhaps never will because we are not sure that all are sufficiently uniform to warrant finding the same units appropriate for all. Moreover, we do not choose at this time to substitute for either "disparity of interests" or "community of interests" yet another short-handed phrase by which units in all nursing home or other nonacute care facilities will be measured. Instead, we prefer to take a broader approach utilizing not only "community of interests" factors but also background information gathered during rulemaking and prior precedent.

Id. at 875. See also CGE Caresystems, Inc., 328 NLRB 748 (1999), in which the Board affirmed the test set forth in Park Manor. Mindful of the guidelines set forth by the Board in Park Manor, I have considered the evidence in this case and find that the single-facility unit sought by Petitioner, encompassing employees at the Nursing Home, to be an appropriate unit under the Act.

In determining the scope of the unit, the Board has established a presumption that single-facility units are appropriate in non-acute health care facilities. Heritage Park Health Care Center, 324 NLRB 447, 451 (1997); Visiting Nurses Assn. of Central Illinois, 324 NLRB 55 (1997); O'Brien Memorial, Inc., 308 NLRB 553 (1992); Manor Healthcare Corp., 285 NLRB 224 (1987). Demonstrating a "functional integration so substantial as to negate the separate identity

---

<sup>25</sup> Community of interest factors include:

[A] difference in method of wages or compensation; different hours of work; different employment benefits; separate supervision; the degree of dissimilar qualifications, training and skills; differences in job functions and amount of working time spent away from the employment or plant situs ...; the infrequency or lack of contact with other employees; lack of integration with the work functions of other employees or interchange with them; and the history of bargaining.



of the single-facility unit” rebuts this presumption. Heritage Park Health Care Center, 324 NLRB at 451 (citing Sol’s, 272 NLRB 621 (1984)). The Board examines the following factors in making this determination: whether there is central control over daily operations and labor relations and the extent of local autonomy; common supervision; similarity of employee skills, functions and working conditions; degree of employee interchange; distance between locations; and bargaining history. Id.

In applying these factors, the Board in Heritage Park Health Care Center, supra, found a single-facility unit appropriate at a nursing home, rather than a multi-facility unit encompassing several nursing homes. In Heritage Park Health Care Center, each facility had its own administrator, own DON and separate accounting system, but had a common president, personnel director, admissions director, and, employee handbook, as well as unified supply ordering. However, each of the individual facilities controlled day-to-day supervision of the employees and there was little contact among employees at the various facilities.

Similarly, in O’Brien Memorial, Inc., supra, in which the Board adopted the Regional Director’s decision that a single-facility unit was appropriate, each of the facilities at issue had control over day-to-day operations, including hiring, firing and discipline (with central oversight of discipline in limited circumstances) a common employee handbook, limited employee interchange and little contact among employees.

In Visiting Nurses Assn. of Central Illinois, supra, the Board found that a single-facility unit, consisting of a visiting nursing facility, was appropriate and declined to include employees at a acute-care facility in the unit. In that case, the facilities were in close proximity, a large percentage of the staff from the visiting nurses facility permanently transferred from the other facility, they also had shared services of groundskeeping, housekeeping, food and after-hours switchboard. The facilities had a degree of functional integration due to patient referrals and the

shared services of certain professional employees. However, these factors were outweighed by each facility's control over daily labor relations, separate supervision, and little employee interchange and contact.

In Manor Healthcare Corp, supra, the Board found a single-facility unit appropriate, where there was infrequent and irregular contact and limited interchange among the employees at the employer's several convalescent homes, even where the facilities were close together and operated under uniform policies with centralized administration.

In the instant case, the record demonstrates that the single-facility presumption has not been rebutted. First, there is no centralized control over day-to-day operations, each supervisor schedules their own employees, issues routine discipline, evaluates their employees and specifies the amount of their raises. While the human resources department has oversight regarding employee hiring and firing, reviews employee evaluations, and has established an employee handbook used by each facility, the record revealed that day-to-day decisions regarding the employees are at the discretion of the on-site supervisors. The on-site supervisors at each facility determine their employees' evaluations, raises, schedules and vacations. There is no common supervision between the Nursing Home employees in the petitioned-for unit and the other facilities. Each employee at the Nursing Home is supervised by his or her immediate supervisor who in turn reports to a department director at the Nursing Home. The department directors' report to the vice-president/administrator. At the other facilities, each immediate supervisor reports to the housing director who in turn reports to either the CFO/VP of finance or the president.

While some of the employees at the other facilities have similar skills and functions to those at the Nursing Home, such as mechanics, food service workers, and environmental service workers, unlike the Nursing Home, the other facilities lack RNs, CNAs or rehabilitative therapists, which is illustrative of the markedly different services provided by the other facilities

from those provided by the Nursing Home. Correspondingly, the Nursing Home employees have working conditions different from those of employees at the other facilities, as they care for residents who require 24-hour medical care in a setting similar to a hospital with two beds separated by a curtain. The employees at the other facilities work with residents who, to a great extent, care for their own daily activities and live independently in an area that resembles apartments with a private bedroom, living room and kitchen.

While the employees at each of the Employer's facilities record their time by punching a clock, have the same handbook, and similar wages and benefits, employees at the Nursing Home work in a hospital-type setting caring for residents who require medical care around-the-clock, unlike the employees at the other facilities. The facilities are physically separate and the Brentland and Seabury facilities are located seven miles from the Nursing Home and fourteen miles from each other.<sup>26</sup>

The record evidence concerning employee interchange establishes that only a small percentage of the entire workforce transfers between the Employer's facilities on either a temporary or permanent basis. Accordingly, this limited interchange, together with a lack of

---

<sup>26</sup> While the Nursing Home and River Edge are separate adjacent buildings with a doorway or walkway connecting them, I note that the Employer does not maintain that a unit comprising the Nursing Home and River Edge is appropriate, but rather that the appropriate unit consists of employees at all four facilities.

evidence establishing any functional integration of the employees' work across facilities, is far outweighed by the significant control over day-to-day operations exercised by each facility. Similarly, the record discloses only limited employee contact between the facilities. Thus, the single-facility presumption has not been rebutted and a single unit consisting of the employees at the Nursing Home is an appropriate unit.<sup>27</sup> See O'Brien Memorial, Inc., supra, Visiting Nurses Assn. Of Central Illinois, supra, Manor Healthcare Corp., supra.

The Employer cites in its post-hearing brief West Jersey Health System, 293 NLRB 749 (1989), in which the Board found appropriate a multi-facility unit encompassing four acute-care facilities. However, in that case, which is notably absent here, there was a greater degree of employee interchange. Specifically in that case, there were 147 permanent transfers, and a regular rotation of 250 other employees in a 14-month period, and employees could bump other employees for jobs at other facilities based on system-wide seniority. Moreover, there were system-wide divisions that included all facilities, with a director for each division. The Employer also cites Child's Hospital, 307 NLRB 90 (1992), where a multi-facility unit was found appropriate among three operations. However, in that case, the operations were located within one building, there was a high degree of functional integration, including lab work and admissions, and a great deal of contact among the employees.

As the Employer has failed to rebut the presumption that the petitioned-for single-facility unit consisting of the Nursing Home is an appropriate unit, I shall direct an election in the single-facility unit.

### **DISPUTED CLERICAL POSITIONS**

The Petitioner claims that the following employees at the Nursing Home are business office clericals ("BOC") and as such lack a sufficient community of interest with employees in the petitioned-for unit and should be excluded from the unit on that basis: receptionists (6);

---

<sup>27</sup> Consistent with this determination, I note that there is no history of collective bargaining at any of the Employer

admissions coordinator (1); purchasing coordinator (1); resident account coordinator (1); and, marketing assistant (1). The Petitioner further contends that the following employees should be excluded from the unit, as they are both BOCs and confidential employees: nursing department secretary (1), nursing department staffing clerk (1), and human resources clerk (1).<sup>28</sup> The Employer maintains that these classifications are not BOCs and that, as clericals, they share a sufficient community of interest with employees in the petitioned-for unit.

The Board distinguishes between BOCs and other clerical employees in hospitals and nursing homes and has included the latter in service and maintenance units. See Rhode Island Hospital, 313 NLRB 343 (1993); Charter Hospital of Orlando South, 313 NLRB 951 (1994); Lincoln Park Nursing Home, 318 NLRB 1160 (1995). In making this distinction, the Board identified a category of BOCs “who perform[ ] distinct functions such as handling finances, billing, and dealing with computerized Medicare, Medicaid, and other health care cost reimbursement systems requiring advanced education and training.” CGE Caresystems, Inc., 328 NLRB 748 (1999). During rulemaking, the Board also observed that BOCs are generally supervised separately, have little interaction with other non-professionals, and are often physically isolated.<sup>29</sup>

The record establishes that the employees in the disputed clerical positions share the same general terms of employment as the Employer’s other hourly employees. With the exception of the marketing assistant, who works primarily at River Edge, the disputed clerical employees all park in the same parking lot and use the same break room and cafeteria at the Nursing Home. All of the disputed clerical employees can dress down on Fridays, and can participate on the Employer’s softball team. They are all subject to the same employee

---

facilities involved herein.

<sup>28</sup> As to those disputed classifications at facilities other than the Nursing Home, their status is no longer at issue as I have found the Nursing Home to be an appropriate unit herein. Accordingly, I make no findings as to their status. This includes the following employees: at River Edge, the administrative assistant and residence manager; at Brentland, the receptionist and residence manager; and at Seabury, the receptionist.

handbook. They are hourly employees and are paid on a weekly basis within the wage schedule used for all employees. They all punch a time clock. The disputed clerical employees receive the same fringe benefits as the other employees included in the unit.

### **Receptionists**

There are approximately six receptionists within the security and communications department, which is a subdivision of the support services department at the Nursing Home. They report to the supervisor of that department, Mark Preston, who in turn reports to the director of support services. They typically work from 8:00 a.m. to 4:00 p.m., or from 4:00 p.m. to 8:00 p.m., at a desk in the lobby, near the main entrance used by all the Nursing Home employees. The requirements for working in this position are a high school diploma, some clerical skills and a pleasant personality.

The job duties of receptionists are to answer the telephone, operate the switchboard, transfer telephone calls, greet visitors and have them sign in, distribute employment applications, visit with residents, sell residents meal tickets for visitors, sell stamps to residents, distribute vending machine error forms, receive and sort the mail, receive medication from the pharmacy, and alert staff and security if a disorientated resident attempts to leave the facility. A facsimile machine is located at the receptionist's station and she receives all incoming facsimiles for the facility.

In Charter Hospital of Orlando South, supra, the Board concluded that receptionists who greeted visitors and answered and transferred telephone calls were not BOCs but rather more appropriately included in a unit of nonprofessionals, excluding BOCs. In so concluding, the Board noted that the receptionists performed non-business office functions, were located apart from the business office, and reported to the communications manager.

---

<sup>29</sup> Final Rule on Collective Bargaining Units in the Health Care Industry, 29 CFR 103, 54 F.R. No. 76, 284 NLRB 1580, 1597 (1989).

Furthermore, in Lincoln Park Nursing Home, supra, receptionists worked at switchboards, transferring telephone calls and greeting visitors in an intermediate care center (ICC) and an adjacent nursing home. The receptionists in the ICC reported to the business office manager, and the receptionists in the nursing home reported to the administrator of the nursing home. The Board reversed a Regional Director's decision finding the receptionists to be BOCs and included the receptionists in a nonprofessional service unit for the following reasons:

The Regional Director found the receptionists to be business office clericals, noting that they have a relatively minimal amount of contact with employees in the service and maintenance unit, that they are not involved in patient care, that the receptionists in ICC report to and are evaluated by the business office manager, and the receptionists in the nursing home are also supervised differently from employees in the service and maintenance unit.

We find, contrary to the Regional Director, that the ICC and nursing home receptionists are not business office clericals. The receptionists do not handle finances and billing, or deal with Medicare, Medicaid, or other reimbursement systems. They work in areas of the facility near the main lobbies, and they are not physically isolated in the business office clerical offices. As discussed above, that the receptionists may have minimal contact with unit employees does not precluded them from being in the unit, because this is not the result of grouping them together in isolation from other nonprofessionals, unlike the business office clericals described in rulemaking. Nor is the Regional Director's reliance on the receptionists' lack of involvement in patient care determinative, because the unit includes employees involved in patient care (e.g., nurses aides) and employees not involved in patient care (e.g., housekeeping and dietary). Thus, we include them in the unit.

Id. at 1165.

Based on the foregoing, I conclude that the receptionists should be included in the unit, as they are not BOCs. The receptionists do not perform typical business office functions such as billing, and they are not involved in other financial matters. Rather, they greet visitors, answer and transfer telephone calls, and interact with residents. They are not geographically isolated from the other employees included in the unit, as they are located in the main lobby and entrance. The receptionists are in one of the support services departments that includes other employees included in the unit. Accordingly, I shall include the receptionists in the unit found appropriate herein.

## **Admissions Coordinator**

The job position of admissions coordinator is within the social work department and reports to the director of social work. The admissions coordinator typically works from 8:00 a.m. to 4:00 p.m., Monday through Friday, in an office located on the first floor of the north hall. The requirements for working in this position are good clerical skills as well as a high school diploma with three or more years work experience in a long-term health care facility, or an associate's degree.

The admissions coordinator is responsible for screening referrals to the Nursing Home. The screening is conducted to ensure that the referral satisfies the Nursing Home's guidelines, including whether the Nursing Home can provide the necessary care. In furtherance of this objective, she performs the following job duties: receives admission referrals, gathers admission information, ensures that admission standards are met based, consults with clinical staff, conducts tours of the Nursing Home, greets new residents, and ensures that the assigned social worker is introduced to the new resident. The referrals received by the admissions coordinator are from the Employer's other facilities, and from hospitals, the community and other nursing homes. In performing these duties, she consults with nurse managers, clinical associates or team leaders to determine how a new resident would affect the nursing unit. If the referral satisfies these requirements, the admissions coordinator makes an offer of a bed at the Nursing Home. In performing her duties, the admissions coordinator spends approximately 80 percent of her day with the potential resident and the resident's family.

The admissions coordinator is not a BOC, as she does not perform the typically business office functions such as billing, dealing with finances or reimbursement. Thus, she is not geographically isolated from, or separately supervised from, the other employees included in the unit. The position of admissions coordinator is in the social work department not the finance



department.<sup>30</sup> Accordingly, I find that the admissions coordinator is not a BOC and, as the position shares a community of interest with other employees in the unit, I shall include the position in the unit found appropriate herein. See Jewish Hospital of Cincinnati, 223 NLRB 614, 621 (1976)(finding that admitting clerks that did not report to accounting or the comptroller, had contact with patients, and were not involved with financial or insurance arrangements to be other types of clericals, rather than BOCs); William W. Backus Hospital, 220 NLRB 414, 416 (1975) (including admitting clerks in a service and maintenance unit where their office was located near, but not in, the business office and they were not supervised by the controller).

### **Purchasing Coordinator**

The job position of purchasing coordinator is in the finance department and she has an office located in the basement of the north hall where the business office is also located. She also works out of the storeroom, which is in the same area. She is supervised by the finance director, Karen Young. The position requires the person to have a bachelor's degree or equivalent education and experience, knowledge of cost controls, purchasing procedures, economic and accounting practices and contracts, and be able to analyze and report financial data.

The purchasing coordinator is responsible for ordering all non-food supplies for each of the four facilities.<sup>31</sup> The unit secretaries and office secretaries fill out weekly requests for supplies, which are given to the purchasing coordinator by mail or in person. She then pulls the items if they are in stock and delivers them to the unit secretary. If the items are not in stock she orders them and informs the nurse manager, clinical associate or team leader when to expect the supplies. At the other facilities, the purchasing coordinator assists in ordering supplies and ensures that they are delivered to the facility. In doing so, she interacts with the resident

---

<sup>30</sup> The admissions coordinator is in the same department as the social work case assistant, who is included in the unit by the parties' stipulation.

<sup>31</sup> Food supplies are ordered by Sodexo for all of the facilities.

manager; resident care coordinator or the receptionists. The facilities also purchase their own supplies by obtaining a purchase order from the purchasing coordinator.

I conclude that the purchasing coordinator's job duties are those of a BOC employee and that the position should be excluded from the unit. This position is supervised by the director of finance and thus is separately supervised from the other employees included in the unit. She is also physically isolated from the unit employees by her location in the business office in the basement of the north hall. The purchasing coordinator is not involved with patient care but rather performs clerical duties in ordering and distributing supplies from various vendors, which require her to engage in accounting procedures including cost controls and analyzing financial data. Accordingly, I conclude that the purchasing coordinator is a BOC and, as such, should be excluded from the unit found appropriate herein. See Valley Hospital, Ltd., 220 NLRB 1339, 1343 (1975) (excluding purchasing personnel as BOCs where they were supervised by business

office and performed primarily office clerical duties).

### **Resident Account Coordinator**

The job position of resident account coordinator is in the finance department and has an office located on the first floor of the north hall. The coordinator reports to the director of finance. The resident account coordinator is required to have five years of experience in healthcare billing and collections.

The resident account coordinator's job duties involve patient billing; examining finances of new admissions to ensure that they satisfy the Nursing Home's financial requirements for admissions; collections of accounts receivable from Medicare, Medicaid or private parties, as required under Medicare Part A, private or otherwise; and counseling residents and families on billing and financial matters related to the services provided by the Nursing Home. This position is also responsible for managing the residents' spending accounts, which involves providing money to residents upon request for outings.<sup>32</sup> The resident account coordinator spends approximately 50 percent of his or her time interacting with the residents.

As the resident account coordinator is directly involved in billing practices at the Nursing Home, as well as obtaining Medicare, Medicaid and private reimbursements, and is directly supervised by the director of finance, she is a BOC and I shall excluded her from the unit on that basis. See CGE Caresystems, Inc., 328 NLRB 748 (1999) (excluding billing clerks as BOCs where they deal with reimbursements, are supervised by a billing manager and work in the billing area of the facility).

---

<sup>32</sup> If a resident is on Medicaid, a specific portion of their monthly social security payment is put into their spending account. Private pay residents can establish their own spending account. The Nursing Home is required to manage that money for the residents and make that money accessible to the residents.

### **Marketing Assistant**

The marketing assistant works in the marketing department and reports to the marketing coordinator, who in turn reports to the director of community services and marketing. The marketing assistant generally works from 8:00 a.m. to 4:00 p.m., Monday through Friday, in the marketing office located at River Edge. This position requires a high school diploma and excellent communication and customer service skills.

The marketing assistant is involved in disseminating information about the facilities in person by conducting sales visits to physicians' offices and hospitals and by telephone to potential residents and their families. To that end, she performs the following job duties: she answers the telephone and provides information regarding the services and programs offered by the various facilities; files, types, distributes brochures and other marketing materials to hospitals, physicians' offices; and conducts tours of the facilities. She may interact with the employees at the Nursing Home while conducting tours of the facility.

The duties of the marketing assistant are those of a BOC, as they directly relate to generating revenue for, and the finances of, the Employer, a typical function of the business office, rather than resident care. The marketing assistant in conducting sales visits and telephone sales is physically isolated from the other employees included in the unit, and she is located at River Edge. Moreover, she is separately supervised from the other employees included in the unit. The marketing coordinator has minimal contact with the residents and the employees included in the unit. Accordingly, she lacks a sufficient community of interest with the other employees included in the unit. As her duties are typical of BOC functions, she is appropriately excluded from the unit as a BOC. See William W. Backus Hospital, 220 NLRB 414, 415 (1975)(excluding the public relations clerk from a service and maintenance unit as a BOC).

### **Nursing Department Secretary**

The nursing department secretary works a daytime shift in an office that she shares with the staffing clerk. The office is located on the first floor of the north hall next to the director of nursing. The nursing department secretary reports to the director of nursing. The position requires a high school diploma and one to three years of secretarial experience.

The nursing department secretary's job duties include: providing clerical services for the director of nursing; assisting the staffing clerk with staffing, clerical data entry, typing and filing; placing service calls regarding the medical records software system; distributing mail to the nursing units; and updating the nursing department's policy and procedural books. She also generates punctuality reports on employees based on the time recorded when they punched in and out of work. She will also provide the nursing director with an employee's schedule and a blank evaluation form, but she does not type the evaluation or any employee disciplinary records. The evaluations and disciplinary records are kept in the human resources office. She types the minutes of the nursing department meetings. She also receives incoming telephone calls, transfers telephone calls to the units, and takes requests for supplies and answers questions about needed equipment or records. She informs the unit secretaries about any changes in procedures and schedules residents' medical appointments. In performing these functions, she interacts with the nurse managers, nurse practitioners, nursing supervisors, staffing clerk and possibly CNAs and LPNs.

Contrary to the Petitioner's assertions in its post-hearing brief, I do not find that the nursing department secretary is a confidential employee. The Board defines confidential employees as those who assist and act in a confidential capacity to persons who formulate, determine, *and* effectuate management policies in the field of labor relations, or who, in the course of their duties, regularly have access to information concerning anticipated changes which may result from collective bargaining negotiations. American Radiator & Standard Sanitary Corp., 119 NLRB 1715, 1720 (1958); The B.F. Goodrich Company, 115 NLRB 722, 724

(1956). These considerations are to be assessed in the conjunctive. Weyerhaeuser Company, 173 NLRB 1170, 1172 (1968). Moreover, employees who merely type, process, file or have access to employee evaluations and records of grievances or discipline are not confidential employees. See Rhode Island Hospital, 313 NLRB 343 (1993); United States Postal Service, 232 NLRB 556, 558 (1978). The party asserting confidential status carries the burden of proof. Crest Mark Packing Co., 283 NLRB 999 (1987).

The record does not establish that the nursing department secretary assists or acts in a confidential capacity to any person who formulates, determines and effectuates policies in the field of labor relations as defined in American Radiator, supra, or B.F. Goodrich, supra. Moreover, even if the nursing department secretary has access to personnel files and documents, such is insufficient to establish confidential status as employees who merely type, process, file or have access to employee evaluations and records of grievances or discipline are not confidential employees. See Rhode Island Hospital, supra; United States Postal Service, supra, (finding that secretaries with access to labor relations material are not confidential employees, where they have no input into the substantive creation of the documents). Thus, the Petitioner has not established that the nursing department secretary is a confidential employee.

I further conclude that the nursing department secretary is not a BOC, as she does not deal with billing or other financial matters which are considered business office functions, is not separately supervised and is not geographically isolated from employees in the petitioned-for unit. Accordingly, as the nursing department secretary is not a confidential employee or BOC, and as the position shares a community of interest with the employees in the petitioned-for unit, I shall include the position in the unit found appropriate herein. See Lincoln Park Nursing Home, 318 NLRB 1160, 1163 (1995), in which the Board found nursing department secretaries not to be BOCs or confidential employees where the secretaries rarely left their office to perform their duties, which involved typing for the director of nursing, including procedures documents,

employee warning notices and termination letters, and the filing of these documents, as well as evaluations and time sheets. In so finding, the Board noted that the nursing department secretaries' work did not involve billing or other financial matters and that they did not assist or act in a confidential capacity to persons who formulate management policies and did not have access to confidential information.

### **Nursing Department Staffing Clerk**

The nursing department staffing clerk is in the nursing department and reports to the nursing department secretary, but is supervised by the director of nursing.<sup>33</sup> The staffing clerk works part-time, Monday through Friday, during various hours. The staffing clerk shares an office with the nursing department secretary, which is located on the first floor of the north hall. The position requires a high school diploma with one year of secretarial experience.

The duties of the staffing clerk revolve around maintaining the Nursing Home's four-week nursing schedule, which is compilation of the schedule created by each nurse manager for their unit. 90 percent of her time is spent interacting with employees in the petitioned-for unit regarding their work schedule. She also maintains a payroll report for the nursing department and generates an exception report explaining employees' activities in using earned time off, planned or unplanned time off, holidays, or working overtime. Generally, the staffing clerk will

---

<sup>33</sup> No party contends that the nursing department secretary is a Section 2(11) supervisor.

take the report to payroll, which is located in the basement of the north hall. She also distributes reports to the units regarding the time off that the nursing department staff has earned. The clerk also accounts for staff members who were scheduled to work on the weekend, but who have notified their supervisor by telephone that they cannot work. She also is responsible for maintaining a database containing the names, addresses and available hours for the nursing department employees. This information is provided to her by human resources and directly by the employees. She also answers telephone calls and transfers the calls to the appropriate unit, or takes a message which she distributes by telephone or in person to the appropriate person.

The record does not establish that the staffing clerk assists or acts in a confidential capacity to any person who formulates, determines and effectuates policies in the field of labor relations as defined in American Radiator, supra, or B.F. Goodrich, supra. Moreover, even if the staffing clerk has access to personnel files and documents by virtue of sharing an office with the nursing department secretary, employees who merely type, process, file or have access to employee evaluations and records of grievances or discipline are not confidential employees. See Rhode Island Hospital, 313 NLRB 343 (1993); United States Postal Service, 232 NLRB 556, 558 (1978). The record also establishes that she is not a BOC, as she does not perform typical business office function such as handling billing, reimbursements or other financial matters, she is not separately supervised from those employees in the unit, and she has contact with other employees in the unit found appropriate herein. Accordingly, I find that the nursing department staff clerk shares a community of interest with the employees in the petitioned-for unit, and is appropriately included in the unit. See Lincoln Park Nursing Home, 318 NLRB 1160 (1995).



## **Human Resources Clerk**

The human resources clerk is in the human resources department. She works part-time<sup>34</sup> from 7:00 a.m. to 3:00 p.m., three days a week, in an office located in the basement of the south hall. She reports to the human resources director. This position requires a high school diploma, two years of clerical experience and good communication and organizational skills.

The clerk is responsible for providing clerical support to the human resource specialist and nursing education coordinator. In this capacity, the clerk is involved with new employee orientation and the education of employees, which entails maintaining the staff's in-service records, certifications and re-certifications, distributing the monthly schedule of education offerings, preparing the in-service bulletin board, and correcting or creating the employees' in-service quizzes. She is also required to provide clerical support to the employee health nurse by contacting employees to schedule their annual physical and inoculations. Her clerical duties also involve assisting and maintaining human resource records and files as well as typing policies and procedures.

The record did not establish that human resources clerk's duties involve assisting any person who formulates, determines and effectuates policies in the field of labor relations. See American Radiator, supra, or B.F. Goodrich, supra. Moreover, her mere access to personnel files and documents is insufficient to establish confidential status as employees who merely type, process, file, or have access to employee evaluations and records of grievances or discipline, are not confidential employees. See Rhode Island Hospital, 313 NLRB 343 (1993); United States Postal Service, 232 NLRB 556, 558 (1978). Thus, the Petitioner has failed to establish that the human resource clerk is a confidential employee.

The record does not disclose that the human resources clerk is a BOC. The clerk is not in the finance department and does not report to a supervisor in that department. She does not

handle any billing, accounting, or financial matters. Accordingly, as the position shares a community of interest with the employees in the petitioned-for unit, I shall include the human resources clerk in the unit found appropriate herein.

Finally, the parties have stipulated to apply the standards established by the Board to determine whether the per diem LPNs and clinical associates worked a requisite amount of time to be considered “regular” part-time employees. I shall apply the standards established by the Board for per diem employees to all the positions included in the unit found appropriate herein, as the parties further stipulated to include all per diem employees in the unit.

The Board’s standard in determining the status of per diem employees in the health care industry has used “various eligibility formulae as guidelines to distinguish ‘regular’ part-time employees from those whose job history with the employer is sufficiently sporadic that it is most accurately characterized as ‘casual’.” Sisters of Mercy Health Corporation, 298 NLRB 483 (1990). Consistent with the parties’ stipulation and the formula used by the Board in that case, I find eligible to vote those per diem employees who regularly averaged four hours or more of work per week during the quarter (13 weeks) prior to the eligibility date. *Id.* at 483-484. See also Davison-Paxon Co., 185 NLRB 21, 24 (1970).

### **APPROPRIATE UNIT**

The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time, regular part-time and per diem licensed practical nurses, service and maintenance employees, admissions coordinator, receptionists, nursing department secretary, nursing department staffing clerk, human resources clerk, assistant chef, certified occupational therapy assistant, certified nursing assistant, certified nursing assistant/program assistant, clinical associates, cooks, food service crew leader, diet clerk, diet technician, environmental service workers, food service workers, health information manager, laundry crew leader, laundry workers, lead maintenance mechanic, maintenance mechanic, nursing rehabilitation aide, physical therapy assistant, recreation resident assistant, social

---

<sup>34</sup> The person currently holding this position also has another job at the Nursing Home working part-time as a unit secretary.

work case assistant, salon manager, unit secretary, wait staff, employed by the Employer at its Episcopal Church Home located at 505 Mt. Hope Avenue, Rochester, New York; **but excluding** the marketing assistant, resident account coordinator, purchasing coordinator, speech pathologist, accounting clerk, accounting manager, administrative assistant to the vice president of operations, billing accounts receivable clerk, chaplain, development assistant, development/PR associate, director of community services, director of human resources, director of nursing, director of finance, director of rehabilitation, director of social work, director of spiritual life, director of support services, director of therapeutic recreation, employee health nurse, executive assistant to the president, executive director of the foundation, facilities management coordinator, human resources specialist, maintenance supervisor, marketing associate, marketing coordinator, nurse managers, nurse practitioners, nursing education coordinator, nursing supervisors, occupational therapists, payroll benefits manager, physical therapist, president, program service coordinator, registered nurse/clinical coordinator, RN/MDS coordinator, security officers, security/communications manager, social worker, therapeutic recreation specialist, vice president of finance, junior recreation assistant, vice president operations/administrator, volunteer coordinator, registered nurses, managers, business office clerical employees, professional employees, guards and supervisors as defined in the Act.

There are approximately 250 employees in the bargaining unit found appropriate herein.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate, as described above, at the time and place set forth in the notice of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the

commencement thereof and who have not been rehired or reinstated before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **1199 SEIU, AFL-CIO**.

### **LIST OF VOTERS**

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to lists of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969); North Macon Health Care Facility, 315 NLRB 359 (1994). Accordingly, it is hereby directed that, within 7 days of the date of this Decision, **2** copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by the Employer with the Regional Director of Region Three of the National Labor Relations Board who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Buffalo Regional Office, Room 901, and 111 West Huron Street, Buffalo, New York 14202, on or before June 5, 2003. No extension of time to file the list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

## **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 Fourteenth Street, NW, Washington, DC 20570. This request must be received by the Board in Washington **by June 12, 2003.**

**DATED** at Buffalo, New York this 29<sup>th</sup> day of May 2003.

---

**CHARLES J. DONNER,**  
Acting Regional Director  
National Labor Relations Board-Region 3  
Thaddeus J. Dulski Federal Building  
111 West Huron Street - Room 901  
Buffalo, New York 14202

Classification Index:

**177 9701 0000 0000**

**177 9712 0000 0000**

**177 9762 0000 0000**

**440 1720 0133 0000**

**470 5080 0000 0000**